

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FANG CONG,

Plaintiff,

v.

XUE ZHAO,

Defendant.

CASE NO. 2:21-cv-01703-TL

ORDER DENYING MOTION FOR
EMAIL SERVICE

This matter comes before the Court on Plaintiff's motion for leave to serve Defendant via email (Dkt. No. 12). Having considered the relevant record and governing law, the Court DENIES the motion.

I. BACKGROUND

Plaintiff Fang Cong, a Chinese citizen, is proceeding *pro se* (without an attorney) in this case alleging copyright infringement of a logo and symbol Cong had designed, in violation of 17 U.S.C. § 504(b). *See* Dkt. No. 1-1 at 3–4, 6. On January 3, 2022, the Court granted her motion

1 for leave to proceed *in forma pauperis*. Dkt. No. 3. Defendant Xue Zhao is alleged to be a
 2 developer and publisher who is also a citizen of China. Dkt. No. 1-1 at 3.

3 On March 3, 2022, Plaintiff filed the instant motion. Dkt. No. 12. In it, Plaintiff seeks
 4 authorization to: (1) “service summons and other documents on the Defendant via Email ONCE
 5 MORE;” and (2) to continue to serve Defendant via email without Defendant’s consent “until the
 6 Defendant provides a new address.” *Id.* at 2–3 (emphasis in original). In support of this request,
 7 Plaintiff cites to Rules 4(c)(1) and 4(m) of the federal rules of civil procedure (FRCP), as well as
 8 previous attempts to serve a lawyer who used to represent Defendant. *Id.* at 2.

9 II. LEGAL STANDARD

10 FRCP 4(c)(1) states that plaintiffs are “responsible for having the summons and
 11 complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to
 12 the person who makes the service.” Fed. R. Civ. P. 4(c)(1). FRCP 4(m) provides a ninety-day
 13 window in which plaintiffs must typically serve defendants; however, it explicitly “does not
 14 apply to service in a foreign country under Rule 4(f)” Fed. R. Civ. P. 4(m). Under FRCP
 15 4(f), individuals located outside of judicial districts of the United States may be served “by any
 16 internationally agreed means of service that is reasonably calculated to give notice, such as those
 17 authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial
 18 Documents.” Fed. R. Civ. P. 4(f)(1).

19 The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents
 20 (the “Hague Service Convention”) is an international treaty. *See generally* the Hague Service
 21 Convention, *opened for signature* Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. 6638. China and the
 22 United States have signed the Hague Convention. *See* Status Table, HCCH,
 23 <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last updated June 17,
 24 2021) (listing parties to the convention). “The Hague Convention requires signatory countries to

1 establish a Central Authority to receive requests for service of documents from other countries
2 and to serve those documents by methods compatible with the internal laws of the receiving
3 state.” *Rubie’s Costume Co. v. Yiwu Hua Hao Toys Co., Ltd.*, No. 2:18-cv-01530, 2019 WL
4 6310564, at *2 (W.D. Wash. Nov. 25, 2019) (citing *Volkswagenwerk Aktiengesellschaft v.*
5 *Schlunk*, 486 U.S. 694, 698–99 (1988)). “[T]he Hague Service Convention specifies certain
6 approved methods of service and ‘pre-empts inconsistent methods of service’ wherever it
7 applies.” *Water Splash v. Menon*, 137 S. Ct. 1504, 1507 (2017) (quoting *Schlunk*, 486 U.S. at
8 699). The Hague Service Convention does not apply in cases where the defendant’s address “is
9 not known.” Hague Service Convention art. 1. “The Hague Convention does not expressly
10 permit service by email.” *Amazon.com Inc. v. Robojap Tech. LLC*, No. 2:20-cv-00694, 2021 WL
11 4893426, at *2 (W.D. Wash. Oct. 20, 2021); *see also id.* at art. 10. China has objected to Article
12 10 of the Convention, which allows service by physical mail.

13 U.S. law also requires service to be “reasonably calculated” to notify a defendant of the
14 lawsuit, so they can have “an opportunity to present their objections.” *Mullane v. Cent. Hanover*
15 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (describing such notice as “[a]n elementary and
16 fundamental requirement of due process”).

17 III. DISCUSSION

18 In the Ninth Circuit, district courts have authority to determine when alternative service
19 of process should be granted in any given case. *Rio Props, Inc. v. Rio Int’l Interlink*, 284 F.3d
20 1007, 1016 (9th Cir. 2002). Factors courts consider when ruling on a motion for alternative
21 service under Rule 4(f)(3) include “whether the plaintiff identified a physical address for the
22 defendant, whether the defendant was evading service of process, and whether the plaintiff had
23 previously been in contact with the defendant.” *Rubie’s Costume Co.*, 2019 WL 6310564, at *2
24 (collecting cases).

1 The Hague Convention applies to requests for service of process under Rule 4(f)(3).
2 *See, e.g., Rio Props., Inc.*, 284 F.3d at 1015, n.4 (“A federal court would be prohibited from
3 issuing a Rule 4(f)(3) order in contravention of an international agreement, including the Hague
4 Convention”); *Brockmeyer v. May*, 383 F.3d 798, 801, 805 (9th Cir. 2004) (explaining that
5 Rule 4(f)(3) “authorizes the federal district court to direct any form of service that is not
6 prohibited by an international agreement,” while quoting *Schlunk*, 486 U.S. at 705, for the
7 proposition that “compliance with the [Hague] Convention is mandatory to all cases to which it
8 applies”).

9 Article 10 of the Hague Convention expressly permits service of process by mail. Hague
10 Service Convention art. 10; *see also Water Splash Inc.*, 137 S. Ct. at 1513. However, courts
11 within the Ninth Circuit are divided on whether an objection by a signatory country to Article 10
12 of the Hague Convention means that the Convention prohibits service of process by email.
13 *Compare Agha v. Jacobs*, No. 5:07-cv-01800, 2008 WL 2051061, at *1–2 (N.D. Cal. May 13,
14 2008) (declining to authorize alternative service via email on German defendant because
15 Germany has objected to Article 10), *with Rubie’s Costume Co.*, 2019 WL 6310564, at *3–4
16 (allowing email service on Chinese Defendants despite China’s objection to Article 10 of the
17 Hague Convention).

18 Here, even if the Court were inclined to circumvent the Hague Convention, Plaintiff has
19 failed to show that the district court should intervene in the present case at this time. *See Rio*
20 *Props., Inc.*, 284 F.3d at 1016 (explaining that alternative service can only be authorized where a
21 party shows need based on the case’s “facts and circumstances”). The only effort Plaintiff has
22 made to serve Defendant was attempted service on a lawyer who no longer represents Defendant.
23 *See* Dkt. No. 12 at 2. Though Plaintiff does not state so explicitly, it appears that the only
24 physical address that Defendant has provided her was for that lawyer. *See* Dkt. No. 12-2 at 2.

1 Plaintiff has not alleged that Defendant's physical address is unknown after making reasonable
2 efforts to find an alternative address, and she has not documented any other efforts to find a
3 physical address to serve Defendant.

4 IV. CONCLUSION

5 For the above reasons, the Court DENIES the motion for email service without prejudice.
6 Plaintiff is INSTRUCTED to either (1) re-file her motion with information explaining the efforts
7 she has made to find an alternative physical address for Defendant **by September 16, 2022**, or
8 (2) take all steps necessary to serve Defendant following the Hauge Convention, including
9 sending the necessary documents to the Central Authority designated by China by no later than
10 **October 3, 2022**. If Plaintiff chooses to serve Defendant following the Hague Convention and
11 Defendant does not appear or otherwise defend this case **within six (6) months** of service
12 through China's Central Authority, Plaintiff may file another motion for alternative service that
13 shows proof that she followed the Hague Convention's requirements in this first attempt at
14 serving Defendant.

15 Dated this 17th day of August 2022.

16 
17 _____
18 Tana Lin
19 United States District Judge
20
21
22
23
24